

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.M. No. 8392-C of 2006
R.S.A. No. 3406 of 2006

Date of decision: 7-9-2006

Municipal Council Alawalpur through its Executive Officer
--- Appellant

Versus

Sukhdev Kumar Chodha and another
--- Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Ms. Madhu P. Singh, Advocate for the appellant.

JUDGMENT

C.M. No. 8392-C of 2006

There is a delay of 125 days in filing the present appeal. This application has been filed for condonation of the same. The primary ground on the basis of which condonation of delay has been sought is that the appellant is a Municipal Council and certain formalities that were required to be completed for taking a decision to file the appeal including the approval from the Director, Local Bodies, Chandigarh etc. took a considerable time. It has been specifically stated that in any case, the delay was neither intentional nor wilful and has only been caused due to the procedural formalities.

After hearing learned counsel for the appellant and perusing the averments made in the application which is supported by an affidavit of the Executive Officer of the appellant-council, delay is condoned. Civil Misc. is disposed of.

R.S.A. No. 3406 of 2006

This is plaintiff's second appeal who remained unsuccessful before the two courts below. A suit for declaration was filed to the effect that the property situated in Chodhian Mohalla Main Bazar, Alawalpur, District Jalandhar shown red in the site plan attached with the plaint, was a part of a public passage vesting in the plaintiff-Municipal Council and the construction raised in the said property shown yellow in the said site plan was illegal and liable to be removed. The plaintiff also sought and prayed as a consequential relief for mandatory injunction directing the defendants to remove the illegal construction raised in the property in dispute and also for permanent injunction restraining the defendants from raising any further construction in the property shown as red and yellow in the site plan. The pleas raised by the plaintiff were denied and controverted by the defendants.

On the pleadings of the parties, issues were framed. The trial court on appreciation of evidence while observing that the plaintiff had failed to lead any cogent evidence to prove its ownership held that the declaration as prayed for could not be granted to it. It was further held that the plaintiff had failed to prove any encroachment or that any projections had been made by the defendants and the construction was thus not liable to be removed. It was also held that the prayer of the plaintiff for grant of decree for permanent injunction had been rendered infructuous. The suit was consequently dismissed. The first appellate court upheld the judgment and decree of the trial court. The significant observations of the first appellate court while dismissing the appeal are as under:-

“All these facts clearly show that the street as well as the drain is in existence as it was before. If the defendants had made any encroachment, then they would have covered part of the drain also. Keeping in view the cross-examination of Om Parkash PW-1 as well as the statement of the defendants witnesses, it is clear that no part of the street has been encroached upon. So far as raising construction without getting site plan sanctioned is concerned, the Municipal Council Alawalpur could always take action as per the provisions of law. However, the plaintiff has failed to establish that the defendants have encroached upon any part

of the street shown in red and yellow colour in the site plan. The judgment and decree passed by the lower court does not require any interference and the same is upheld.”

I have heard learned counsel for the appellant and gone through the record. Counsel for the appellant vehemently submitted that the findings recorded by the courts below are wrong and thus legally unsustainable. The findings recorded by both the courts below are concurrent findings of fact based on appreciation of evidence oral as well as documentary and do not call for interference by this Court in second appeal. The counsel could not pinpoint any illegality or perversity in the said findings. No question of law, much less a substantial question of law arises in this appeal for the consideration of this Court. The appeal is consequently dismissed.

September 07, 2006
MALIK

(AJAY KUMAR MITTAL)
JUDGE